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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Michael Abraham Farr,

10 Petitioner,

11 v.

12 Bonnie Jeanene Kendrick,

13 Respondent.
14

No. CV-19-08127-PCT-DWL

ORDER

15 On May 22, 2019, shortly after a status conference was held, pro se Petitioner
16 Michael Farr telephoned the chambers of the undersigned judge to inquire as to whether
17 trial briefs, evidence, or other documentation for the above-captioned case should be
18 emailed to the Court or filed on the docket. Petitioner was told that an order would issue
19 explaining the proper procedure.

20 Later that day, at 1:41 p.m., the chambers of the undersigned judge received an ex
21 parte¹ email from Petitioner, addressed to the undersigned judge, (1) sharing Google Docs
22 hyperlinks for his “working exhibit list” and “working exhibit folder,” (2) asking the Court
23 to pay particular attention to specific exhibits, (3) attaching a “warning letter” sent to
24 Respondent Bonnie Jeanene Kendrick via her counsel, (4) noting a plan to file trial briefs
25 regarding why he “believe[s] it to be important to call [Z.K.] (age 17) as a witness and
26 [K.F.] (age 9) as a potential rebuttal witness,” and (5) stating that if he is not permitted to

27 ¹ “Ex parte” means “[d]one or made at the instance and for the benefit of one party
28 only, and without notice to, or argument by, any person adversely interested; of or relating
to court action taken by one party without notice to the other” Black’s Law Dictionary
616 (8th ed. 2004).

1 subpoena witnesses in the United States to testify telephonically, “it will be very difficult”
2 for him “to expose all the false statements” Respondent has made, as Petitioner asserts that
3 he does not “have the funds to hire an attorney let alone hire a court reporter for the
4 deposition of all these witnesses.” (Email, Exhibit A.)

5 Ex parte communication between a party and the Court is forbidden, except in a few
6 limited circumstances. Rule 2.9 of the Model Code of Judicial Conduct provides that “[a]
7 judge shall not initiate, permit, or consider ex parte communications” unless one of three
8 exceptions apply. Model Code of Judicial Conduct R. 2.9(A). Two of those exceptions
9 don’t apply in this case—when the parties have consented to ex parte judicial conferences
10 to facilitate settlement, *id.* R. 2.9(A)(4), and when a law expressly authorizes ex parte
11 communication, *id.* R. 2.9(A)(5). The third exception is as follows:

12 When circumstances require it, ex parte communication for scheduling,
13 administrative, or emergency purposes, which does not address substantive
14 matters, is permitted, provided the judge reasonably believes that no party
15 will gain a procedural, substantive, or tactical advantage as a result of the ex
parte communication and the judge makes provision promptly to notify all
other parties of the substance of the ex parte communication, and gives the
parties an opportunity to respond.

16 *Id.* R. 2.9(A)(1).

17 Petitioner’s ex parte telephone call, for example, falls into this exception. Petitioner
18 asked two administrative questions, no part of the call addressed substantive matters, and
19 the questions were not answered during the call, so there was no possibility that Petitioner
20 could have gained a procedural, substantive, or tactical advantage from the ex parte
21 telephone call. Moreover, because Petitioner was told nothing, there was no need to notify
22 Respondent that the call had been placed.

23 Petitioner’s email, on the other hand, does not fall into this exception. The content
24 of the email was largely substantive, and parts attempted to further Petitioner’s case on the
25 merits and/or push for certain desired relief (*e.g.*, permission to call the child witnesses,
26 permission to subpoena witnesses in the United States to testify telephonically). Ex parte
27 communication such as this—in any form, including email, telephone, in person, or other
28 in any other mode—is impermissible. *Id.* R. 2.9(A).

1 The Rule provides guidance on how the Court must proceed: “If a judge
2 inadvertently receives an unauthorized ex parte communication bearing upon the substance
3 of a matter, the judge shall make provision promptly to notify the parties of the substance
4 of the communication and provide the parties with an opportunity to respond.” *Id.*
5 R. 2.9(B). *See also Palmer v. City & County of Denver*, 2019 WL 458910, *3 (D. Colo.
6 2019) (“[P]laintiff sent a series of *ex parte* communications to the email account of the
7 magistrate judge’s chambers. The magistrate judge ordered these improperly submitted
8 documents to be placed on the public docket.”); *Peterson v. New Castle Corp.*, 2011 WL
9 5117884, *3 3 (D. Nev. 2011) (“Plaintiff’s counsel submitted a brief to chambers email
10 without any certificate of service on Defendants, and without entering it into the docket.
11 This brief is not only ‘blind,’ meaning no response is permitted, it is *ex parte*, meaning it
12 is a communication to the Court without knowledge of the adversary. The Court did not
13 mean to invite *ex parte* briefs. The Court will enter the brief into the docket *sua sponte* for
14 the record.”).

15 The body of the email is attached to this Order as Exhibit A. This notifies
16 Respondent of the substance of the communication.² The hyperlinks have been redacted
17 because they appear to invite the viewer to review a body of Petitioner’s work product, and
18 at any rate, the Court did not click on them, so the content of whatever exists at the
19 destination of those links was not a part of the inadvertently received, unauthorized ex parte
20 communication.

21 Respondent has the opportunity to respond to the content of the email (see Exhibit
22 A), if desired, by filing a response not to exceed two pages by May 29, 2019.

23 Accordingly,

24 **IT IS ORDERED** that neither party may communicate with the Court ex parte,
25 except, if necessary, to inquire about purely procedural, administrative, or emergency
26 matters.

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28 ² The Court understands that Petitioner has already provided Respondent with the
letter that was attached to the email to the Court. To the extent he has not done so,
Petitioner is ordered to provide her with that letter.

1 **EXHIBIT A**

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3 From: mike farr <farrmike@gmail.com>

4 To: lanza_chambers@azd.uscourts.gov

5 Date: 05/22/2019 01:41 PM

6 Subject: Warning Letter and Exhibits

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9 Judge Lanza,

10

11 I would like to share my working exhibit list with you. It can be accessed at the following
12 link.

13

14 I would specifically ask that you pay to attention Exhibit #78, Exhibit #66, Exhibit 65

15

16 [redacted]

17

18 I would also like to share my working exhibit folder. It can be accessed at the following
19 link.

20

21 [redacted]

22

23 Lastly, I've included a copy of the warning letter that I sent to Ms. Kendrick via Steve
24 Everts.

25

26 I plan to follow up with trial briefs in regards to why I believe it to be important to call
27 [Z.K.] (age 17) as a witness and [K.F.] (age 9) as a potential rebuttal witness.

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1 If I cannot subpoena witnesses in the US to testify telephonically, it will be very difficult
2 for me to expose all the false statements they have made. Do not have the funds to hire an
3 attorney let alone hire a court reporter for the deposition of all these witnesses.
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5 Sincerely,

6 Michael F.
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